

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on January 18, 1999 at
10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Mary Morris, Acting Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) : SB140, SB195
Executive Action: SB140, SB173

HEARING ON SB140

Sponsor: SEN. LINDA NELSON, SD 49

Proponents: Mike Cooney, Secretary of State
Joe Kerwin, Deputy Secretary of State for Elections
Verner Bertelsen, Montana Senior Citizens
Association
Barrett Keiser, President, Associated Students of
the University of Montana
Colin Stephens, Associated Students of Montana State
University-Billings

**Robert Throssell, Montana Association of Clerk and
Recorders**

Darrell Holzer, Montana AFL-CIO

Opponents: None

Opening Statement by Sponsor:

SEN. NELSON reported that she is carrying this bill for the Secretary of State, that it makes voting simpler in that any voter can request an absentee ballot. She explained that, under current law, persons can vote by absentee ballot if they expect to be absent from the county on election day, if they are physically unable to go to the polls, or if they are suffering from ill health, and this is especially difficult for senior citizens, and others who may not meet those requirements but may not want to go to the polls for whatever reason. She pointed out that some voters have to travel to vote, and gave the example of voters in her district who do not wish to travel the distance to their designated polling place on election day, so she told them to request an absentee ballot, noting that it may appear she is encouraging them to lie in order to do their civic duty. She pointed out that, if CI-75 is upheld, the ballots will be such that more people will probably opt to study the issues at home, and cast their ballot with the issue in front of them.

SEN. NELSON indicated that the bill needs a technical amendment to insure that the existing procedure for voters with sudden illnesses immediately before the election will remain in the law.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 2}

Proponents' Testimony:

Mike Cooney, Secretary of State, reiterated that this bill will make it easier for people to participate in elections. He said it will help those people who aren't sure if work will keep them too busy on election day, which is an excuse he hears time and time again, and this will possibly assure that people who are victims of harsh weather or early winter storms may have the opportunity to vote. He added that his office also hears about people who have personal family problems that arise on or around election day, and he is sure there are a number of other examples as to why people do not vote on election day. He pointed out that the purpose of elections is to let Montanans choose candidates and ballot measures they want, not make it difficult or set up obstacles they must hurdle to prove they should be allowed to exercise their right to vote.

Mr. Cooney noted that security and confidence, and the integrity of the election, are essential, and he believes that as long as there is adequate security, the process should be opened up to all Montanans. He added that the one way CI-75 will possibly succeed is to have a true majority of eligible people participate, and this would put into place a system that would allow the most people to participate. He referred to testimony by **SEN. NELSON** that people are scattered far and wide across this state, and going to the polls on election day is not always easy, and said that he thinks this will give people the greatest opportunity they could possibly have to participate.

Joe Kerwin, Deputy Secretary of State for Elections, explained that all this bill does is change who can request an absentee ballot and that, after that, the entire process stays the same. He described the procedure for requesting an absentee ballot, and outlined how an absentee ballot is handled. He pointed out that all of the existing safeguards currently in statute will not be affected by this bill. He then referred to a technical amendment that is needed in section 2, subsection 2 of 13-13-211, **EXHIBIT (sts13a01)**, dealing with a voter who has a sudden health emergency, and explained that, in the process of striking duplicate language, there was concern that too much language had been stricken, and an amendment is needed to restore that portion of subsection 2 that reads "A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on the day of election may request an absentee ballot." He reiterated that all this bill addresses is the requirements for applying for an absentee ballot.

{Tape : 1; Side : A; Approx. Time Counter : 2 - 9}

Verner Bertelsen, Montana Senior Citizens Association, related that, while he was Secretary of State, a candidate sent voters in his district a list of candidates on his ticket, along with an application for an absentee ballot, and he had to remind the candidate that it was illegal to do that. He noted that, every once in a while, someone is tempted to request an absentee ballot when, in reality, they are not legally eligible to. He noted that some people may think this would open up the opportunity for more fraud, but that he did not think that would happen, and that it should increase the number of people who vote by taking away some of the restrictions and limitations they have in attending the polls. He urged the committee to pass this piece of legislation.

Barrett Keiser, President, Associated Students of the University of Montana, reported that, historically, voters between the ages

of 18 and 24 are very poor voters, and anything to make it easier for students to get their ballot in is a very good bill. He encouraged the committee to support the bill.

Colin Stephens, Associated Students of Montana State University-Billings, stated that he has never voted in his precinct, that he has always voted by absentee ballot, and he would encourage the committee to support this bill.

Robert Throssell, Montana Association of Clerk and Recorders, reported that he represents the election administrators, and appears in support of SB140. He indicated that the election administrators are faced with questioning people who apply for absentee ballots, and they believe that, once a person identifies themselves as a registered voter and have established that they are an adult and a citizen, there should be no further questioning. He pointed out this may expand voting by mail and they have been concerned about this and, although they want the participation, as more people request mail ballots, the cost of elections increases. He added that they have no idea how many new people will request absentee ballots, but that it is a concern, and it is also a concern that we are starting to change the way and manner in which people vote, with less reliance on appearing at polling places, moving to a mail ballot system, and the costs associated with that. He stated that, again, the Association believes the Constitution and the laws provide for citizens to vote, and they should not be required to make up stories to vote.

{Tape : 1; Side : A; Approx. Time Counter : 9 - 16}

Darrell Holzer, Montana AFL-CIO, stated they also offer their support for SB140. He reported that a lot of the people they represent work in occupations where they do not know from hour to hour what their work schedules will be and, during the last election, he visited with members and encouraged them to consider applying for an absentee ballot, in the event they were going to be unavailable within their county on election day. He said there was reluctance to do that, noting that **Secretary of State Cooney** and others have done a good job of educating people what the current law says, and their members were very conscious about not wanting to falsify an affidavit. He stated that they strongly believe that anything which will increase the level of participation in the election process is a great thing, and they strongly support SB140.

Questions from Committee Members and Responses:

SEN. WILSON asked **SEN. NELSON** if she anticipates the costs might go up and, if so, how much. He further asked if there should be a fiscal note. **SEN. NELSON** said there is a fiscal note, **EXHIBIT(sts13a02)**, that it is \$2,218, and the assumptions are that 10% of the 1998 electorate will request absentee ballots. She noted that each absentee ballot will cost \$.50 to print and mail, adding that this is probably under-estimating the cost, especially with CI-75, but that she thinks it's worth those figures, that it's something whose time has come.

SEN. HARGROVE asked if there aren't a lot of people already doing this, probably through not knowing what the law is. **Mr. Kerwin** said that there are probably a lot of people applying for absentee ballots when they technically should not do so under current statutes.

SEN. TESTER asked who bears the cost of absentee ballots, and if that is borne by local government. **Mr. Cooney** responded that, in a special election, the state assumes the cost but, in a regular scheduled election, the majority of costs are assumed by local government. He added that it is an interesting question how they can anticipate the number of people who will use this. He said, if this bill passes, he thinks there will be a slight increase of people voting by absentee ballot and, down the road, they may see even greater increases in people wanting to vote by absentee ballot but, he asked, what is the cost of democracy and full participation by our citizenry, which is the issue before the committee and one they have to look at very carefully.

SEN. TESTER noted that, with CI-75 and the sheer number of items that will be on the ballot in the next election, absentee voting might be used extensively because it will be like reading a book.

{Tape : 1; Side : A; Approx. Time Counter : 16 - 22}

CHAIRMAN COLE asked **Mr. Throssell** if they have any idea what a 10-15% increase might cost the counties. **Mr. Throssell** responded that he does not have specific figures, that each county handles ballots differently. He pointed out that some counties mail a paper ballot and other counties mail a computer card, so mailing costs would vary greatly, noting also that they really do not know what the increased participation might be. **CHAIRMAN COLE** asked if the costs would be greater with a hand-written ballot. **Mr. Throssell** reported that mailing a punch card may actually be less than mailing a thick paper ballot, and apologized for not having the figures.

Closing by Sponsor:

SEN. NELSON thanked the proponents for their support, and said it's something that just makes sense. She noted that we don't want to cause people to break the law, and thinks there will be more need for this in coming elections.

{Tape : 1; Side : A; Approx. Time Counter : 22 - 25}

HEARING ON SB195

Sponsor: SEN. J.D. LYNCH, SD 19

Proponents: C. Hal Manson, American Legion of Montana
Larry Longfellow, Quartermaster, VFW
John Sloan, DAV Department of Montana, and the
Military Order of the Purple Heart
Eric Feaver, Montana Education Association, and the
Montana Federation of Teachers

Opponents: Mike O'Connor, Executive Director, Public Employees
Retirement System

Opening Statement by Sponsor:

SEN. LYNCH said he introduced this bill because it was pointed out to him that the Teachers' Retirement System affords Vietnam Veterans, at no cost to them, the opportunity to receive up to 4 years of additional service in the system, and he thought that the same provisions should be put in the Public Employees Retirement System to accommodate veterans of Vietnam, as well as Korea. He noted that he understands there will be a cost to the system, that it will come to .0029%. He reported that these veterans were short-circuited in their college or careers because of the Vietnam War, while others remained at home simply because their lottery numbers were higher, and this is something we should be able to do for those veterans who served in Vietnam, came home and went to work for a public entity, and joined the retirement system, that this would give them some recognition for the great service. He added that many were wounded, and many lost comrades in that war.

SEN. LYNCH stated that he knows the PERS will oppose the bill because of the fiscal impact, and suggested that, in order to get the bill passed, the committee consider requiring the veteran pay up to half of the cost. He noted that the assumption in the fiscal note, **EXHIBIT(sts13a03)**, is that the maximum number of veterans would take advantage of this, and pointed out that there

is a provision in the bill that the veteran must have 10 years in the system in order to be eligible. He added that it is a philosophical question as to whether veterans in the PERS should be treated differently than veterans in the TRS, or other systems. He said he thinks it is an obligation we have to these men and women who sacrificed much to serve their country, and this would be a small thing we could do for them. He then indicated that the committee also consider reducing the number of years to 1 or 2, noting that anything would help these people.

Proponents' Testimony:

C. Hal Manson, American Legion of Montana, said they believe this would be fair, that few of these people can buy a great deal because it is expensive, and any breaks they can get would be greatly appreciated. He stated that the American Legion is in favor of this bill.

Larry Longfellow, Quartermaster, Montana VFW, reported that he is a combat Vietnam Veteran, that he supports this bill, the VFW supports the bill, and it is a very good bill for Vietnam Veterans.

John E. Sloan, DAV Department of Montana, and the Military Order of the Purple Heart, said they strongly support this bill for reasons set forth by **SEN. LYNCH**.

Eric Feaver, Montana Education Association, and the Montana Federation of Teachers, reported that, in 1981, MEA and MFT urged the Legislature to adopt the provisions providing free creditable service to Vietnam Veterans in the TRS, and it only makes sense that public employees receive the same consideration. He stated that .0029% is like nothing at all, and he can not believe that the PERS could not absorb that cost under re-amortization of its debt, which is declining. He urged the committee to give their colleagues in the public sector the same consideration teachers have enjoyed for some time.

{Tape : 1; Side : A; Approx. Time Counter : 25 - 33}

Opponents' Testimony:

Mike O'Connor, Executive Director, Public Employees Retirement System, reported that the PERS Board has adopted guidelines and the number one principle the Board looks at is if a piece of legislation is funded, that it is most important that proposals for increases in retirement benefits include a sufficient funding mechanism. In addition, proposals must provide funding from sources sufficient to cover future costs, and to amortize any

unfunded liabilities created by the proposal. He stated that this service represents a significant cost to the PERS system, it would create \$16.8 million in additional liability, that SB195 does not provide for any funding mechanism and, unless this proposal is funded, the Board can not support SB195.

Questions from Committee Members and Responses:

SEN. TESTER asked **SEN. LYNCH** if he testified that 1400 people are qualified. **SEN. LYNCH** responded that the fiscal note is based on the assumption that every veteran will take advantage of this benefit as soon as possible, but that he believes the average is only 2.4 years now and they can not qualify until they have 10 years in the PERS. He explained that those who are now at about 26 years might be able to get 28 and get out, but the average is 2.4 years now.

SEN. TESTER asked **Mr. O'Connor** if he testified it will take \$16.8 million in additional revenue, and **Mr. O'Connor** confirmed. **SEN. TESTER** asked if that is taken out over the lifetime of the employee, or if that is the additional cost next year if this is implemented right away. **Mr. O'Connor** responded that \$16.8 million is what it will cost to provide the benefit. He explained that those 1440 people would be able to purchase 2.4 years, and retire 2.4 years earlier, and the cost is the amount of service they are giving them so they have the ability to retire earlier than they normally would. **SEN. TESTER** asked what the yearly cost would be, or if that would be applicable. **Mr. O'Connor** said that there is not a yearly cost, that the benefit is based on years of service times average salary.

SEN. HARGROVE asked how much, on average, would an individual have to pay to buy those years of service. **Mr. O'Connor** responded that it is based on percent of salary, so an individual with 10 years of service with a year of military, would pay around 12% of salary. If they were closer to retirement, for example at 29 years of service and purchase one year of service, that cost is 28% of salary. He added that it is a sliding scale based on years of service.

{Tape : 1; Side : A; Approx. Time Counter : 33 - 40}

SEN. HARGROVE indicated that he does not think the committee needs the fiscal note to deliberate on this proposal because he doubts the fiscal note goes into much detail. He said that it is most likely based on empirical data of how many are in the system, and if they all took advantage of it, but that it seems to him there are a lot of reasons why people may not, such as the cost, their age, their term of service, and it seems subjective

as to how many would do this. He added that he does not know if that kind of analysis can be done on a fiscal note, and asked **Mr. O'Connor** to comment on that. **Mr. O'Connor** reported that it was an interesting fiscal note to put together, that their actuary went through national records to determine how many Korean Veterans and Vietnam Veterans are here and then, based on national averages, he made an assumption of how many are public employees, what percentage of Korean Veterans would take advantage of this and what percentage of Vietnam Veterans would take advantage of it. He noted the majority would be Vietnam Veterans because most Korean Veterans are already retired or of retirement age, and then he made an assumption that, out of the 30,000 members of the PERS system, 1440 would be eligible to purchase, on the average, 2.4 years of service.

{Tape : 1; Side : A; Approx. Time Counter : 40 - 43; Comments : End of Side A, Tape 1}

SEN. HARGROVE said that a quick calculation indicates the cost could be as much as \$10,000 to buy one year, and asked **Mr. O'Connor** if that is correct. **Mr. O'Connor** confirmed it is, based on their salary. **SEN. HARGROVE** pointed out that it would cost \$50,000 to buy 5 years, and asked how long they would have to live to get that back, considering the interest. **Mr. O'Connor** said that is a really good question that people should ask themselves when purchasing service.

SEN. WILSON asked if, during the Korean Conflict or the Vietnam War, any National Guard were called up, and explained that the National Guard were called in Desert Storm. He asked if, in the drafting of the bill, they considered who it would include. **Mr. O'Connor** explained that public employees who served in Desert Storm were able to get credit for that service when they returned.

CHAIRMAN COLE asked if members of TRS already have all of the benefits this bill is requesting for PERS members. **Mr. Feaver** confirmed, noting that Vietnam Veterans were added in 1981, that WWI and Korean Veterans received full creditable service, year by year. He reported that, in 1981, the cost of this additional benefit for Vietnam Veterans was essentially absorbed by increasing the employer school district's contribution to the TRS, and that, in 1989, the years of service were expanded slightly, which was also absorbed by the school districts. He stated, under CI-75, that is no longer possible, and he believes that the PERD system can pick up this cost by pushing the unfunded liability forward, adding that, as he understands it, right now, the PERS is significantly below what would be considered a danger point, that it is well below 25 years, and

significantly below 30, and that cost could be absorbed by the system itself.

Closing by Sponsor:

SEN. LYNCH reminded the committee that the most a veteran can buy is the time they actually spent in the conflict. He said he thinks there is something this state can do, that they are only talking about a little over a quarter of a percent, noting that a compromise would be to limit it to 2 years, and that in itself would be a great help. He asked that the committee come up with something to help these veterans, that others have been helped over the years and these people shouldn't be treated differently.

SEN. WILSON apologized for his question about the National Guard, indicating he did not mean to offend anyone.

{Tape : 1; Side : B; Approx. Time Counter : 43 - 51}

EXECUTIVE ACTION

CHAIRMAN COLE announced the committee would not take executive action on SB195 until the committee is able to review the fiscal note.

SEN. HARGROVE asked **CHAIRMAN COLE** what the amendments to SB11 cover. **CHAIRMAN COLE** explained that one amendment would extend the committees from 8 to 12, if necessary. **SEN. HARGROVE** reported that the members of the TAC have indicated they would like to continue, and asked to be exempted from the repealer. **CHAIRMAN COLE** said the committee would consider the amendments tomorrow, noting that he did not want to open it up too much because then they would be back to where they have been with too many interim committees.

CHAIRMAN COLE reported that the sponsor of SB102 has asked the committee to put the bill on hold, that it is a Constitutional Amendment and the sponsor believes it may not be needed. He asked that the committee consider SB173 at this time.

SEN. TESTER said he has some concerns regarding SB173 with regard to the funding of that office. He indicated that he thinks, down the road, something does need to be done, but he does not think it should come out of the budget of the Human Rights Commission and, for that reason, he will oppose the bill.

SEN. WILSON said he liked the concept, but believes the office should be based in Helena, and that he agrees with **SEN. TESTER** that funding is a problem, so he will oppose it, too.

CHAIRMAN COLE reported that an amendment has been proposed, but has not yet been prepared in writing. **Mr. Niss** explained that the sponsor has requested that the language "American Indian" on page 1, line 27 be replaced with "Caucasian of national origin other than United States born citizens in Montana." **SEN. TESTER** asked if there was any point in considering an amendment if the bill was going to be defeated. **Mr. Niss** only to indicate the committee's support for that language. **CHAIRMAN COLE** said he would like to see the committee take action on the amendment.

Motion/Vote: **SEN. HARGROVE** moved that **SB173 BE AMENDED**. Motion carried unanimously.

Motion/Vote: **SEN. TESTER** moved that **SB173 AS AMENDED BE TABLED**. Motion carried unanimously by roll call vote.

{Tape : 1; Side : B; Approx. Time Counter : 51 - 61}

SEN. TESTER reported that **Mr. Kerwin** prepared a proposed amendment to restore the language in section 2, subsection 2, regarding persons with a sudden illness, **EXHIBIT(sts13a04)**. He read the proposed amendment to the committee.

Motion/Vote: **SEN. TESTER** moved that **SB140 BE AMENDED**. Motion carried unanimously.

SEN. HARGROVE said that a lot of people use absentee ballots and think it is okay, and a rationale for SB140 is to keep people from breaking the law. **CHAIRMAN COLE** noted that there has been an increase in absentee voting already, especially in very rural districts. **SEN. TESTER** added that this would allow people who are ill or the elderly to still vote, that the bill does have merit and he thinks the merit outweighs the cost. **CHAIRMAN COLE** indicated that he has spoken to the Secretary of State about getting more information out to the public about the process. **SEN. HARGROVE** said it would be interesting to see what happens if this bill passes, and he hopes it will increase the number of people who vote.

Motion/Vote: **SEN. WILSON** moved that **SB140 DO PASS AS AMENDED**. Motion carried unanimously.

CHAIRMAN COLE announced the committee will hear SB194 and take executive action on SB11 and SB195 at tomorrow's meeting. He asked **Ms. Morris** about the forms for the committee members to use in contacting the Governor's Board appointees. **Ms. Morris** responded she would bring the necessary documents to the committee meeting tomorrow.

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. MACK COLE, Chairman

MARY MORRIS, Acting Secretary

MC/MM

EXHIBIT (sts13aad)